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BARRETT & WEBER

A LEGAL PROFESSIONAL ASSOCIATION

C. FRANCIS BARRETT
H. PATRICK WEBER
MICHAEL R. BARRETT
M. MICHELE FLEMING
JANET L. BELL
KENNETH J. ELING
KARRI K. HAFFNER
CINDY L. TURNER

500 FOURTH & WALNUT CENTRE
105 EAST FOURTH STREET
CINCINNATI, OHIO 45202-4015

TELEPHONE (513) 721-2120

FACSIMILE (513) 721-2139

June 2, 1999

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Sherry Estes, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, IL 60604

RE: Skinner Landfill

Dear Ms. Estes:

As you may be aware, The City of Reading entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing for settlement of Plaintiffs' claims regarding their past costs at the Skinner site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between The City of Reading and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that pursuant to Section 122(g)(2) of CERCLA includes a covenant not to sue or take administrative action for each De Minimis Party under Sections 106 or 107 of CERCLA with respect to the site and includes contribution protection to the full extent of the law under Section 122(g)(5) of CERCLA against all claims of any persons for past and future response costs incurred or to be incurred at or in connection with the Skinner site. Further, the Agreement with the Plaintiffs provides that an agreement reached with the EPA will be at least as protective of the City's interest as are the terms of the EPA's Model De Minimis Consent Decree set forth in the December 7, 1995 Federal Register.

It is the City of Reading's understanding from the Plaintiffs that EPA, Region V has now determined what information it will require in order to determine that the City of Reading qualifies for a de minimis settlement agreement at this Site. That information consists of: (i) the summary of each de minimis settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de

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minimis settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report. The City of Reading further understands, based on the Plaintiffs representations, that this material may be submitted to the EPA consistent with paragraph 24.b of the Case Management Order without any known objections from any participant in the Skinner ADR process.

Accordingly, I am enclosing the information requested by EPA for the City of Reading. I believe that this information amply demonstrates that the City of Reading is entitled to a de minimis settlement consistent with EPA's model de minimis settlement decree. The City of Reading understands that EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by the City of Reading in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, the City of Reading does not acknowledge any liability for response costs at the Skinner site.

In order to ensure that the City of Reading is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, the City of Reading strongly urges the EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's de minimis settlement policies, as well as provide needed funds for response actions at the Skinner site.

Sincerely,

BARRETT & WEBER



Michael R. Barrett

Attorney for The City of Reading

Enclosures

City of Reading

Settlement Amount: \$2,000.00

Excerpt from Allocator's Preliminary Report :

According to Reading's questionnaire response, Reading's Service Department provided waste removal and transportation services from 1930 - August 1981 for all residences and small retail and commercial businesses. From August 1981 - 1990, Reading contracted with Rumpke for waste removal, transportation and disposal. During the entire relevant time period, large businesses contracted privately for all such services.

In 1945 - 1946, the City paid to dump waste on the land of Mary and Charles Sanders. Reading had its own incinerator from 1946 - 1970, where all waste it collected was burned. In 1971, 1972, 1973, 1979, 1980 and 1981, Reading took its waste directly to the conveyor belt of Clarke's Incinerator. From 1973 - 1977, Reading took its waste to the Rumpke landfill.

In 1945 - 1946, Reading used three 18 cubic yard trucks to transport its waste daily to the Sanders' property. During 1981 - 1990, Rumpke collected and disposed of waste for the City - approximately 890 tons/month, using one 25 cubic yard truck daily.

Reading had no sewage or wastewater treatment plant during the relevant time period. It has contracted for sewer service with the City of Cincinnati since 1948.

After what it called a thorough, three month investigation, Reading argued that there was no evidence of any sort that it ever sent waste to the Site. There is no reference to Reading in the Skinner ledgers. The City reiterated that all of its wastes were burned in its own incinerator from 1947 - 1970. The incinerator also took waste from surrounding cities, Reading noted.

Reading submitted numerous documents including copies of City Ordinances, Resolutions, ledgers, payroll records, etc. to support its responses. The Skinners do not appear as payees in any of the accounting documents for garbage disposal payments that cover the time period 1945 - 1946, 1949, 1971 - 1983. Albert Skinner does appear as a payee in the 1949 appropriate ledger for "work on 4th Street" and "work with dragline." He also received \$3,300.93 to grade and fill an athletic field according to ordinance 684-1949 provided by the City.

The City's submittal was extremely thorough. It demonstrates persuasively that household garbage did not reach the Skinner Landfill from Reading. There are two items of testimony that the City has not directly refuted. The first item deals with the disposal of wastes associated with vapors released from a paint plant in the 1940s or 1950s based on the Elsa Skinner testimony and the second relates to the disposal of roadside debris based on Ray Skinner testimony.

Elsa Skinner had discussed the paint plant incident in her sworn statement to EPA. She made reference to an explosion at a paint company in Reading. The City said it researched local newspapers and could not find any evidence of this explosion. It did not locate any fire records on this event. It added that long time residents did not recall the event either. Reading also argued that if there was a paint company, the City would not have been involved in its waste disposal since businesses arranged for their own disposal.

Finally, the City included in its submittal a portion of a transcript (p. 350-359) from evidence taken before the court in State of Ohio EPA v. Albert and Elsa Skinner, CV 77-08-0679, on August 16, 1978 to try to suggest that Elsa Skinner was perhaps talking about a different company. Charles Gertz, Mayor of Reading for 30 years, he testified, was the first witness that appeared in the transcript excerpts provided to me. Albert and Elsa Skinner were also witnesses. Mayor Gertz was asked if there were any factories in Reading and testified there were. He was then asked whether Albert Skinner had any relationship to those factories. He answered by explaining that General Match Factory had gone out of business but had a sister company called General Phosphorous that processed chemicals used in the manufacture of matches. It too went out of business. Mr. Skinner, Mayor Gertz explained, demolished the building, and hauled away some vats or stills "with some of those chemicals still in it, to my knowledge." Mayor Gertz placed the time of this event as over "20 years ago" or before 1958.

In her deposition testimony in this matter, Elsa Skinner described what she recalled as follows:

Q. And what about the City of Reading, what -- why was it a source of drums that you can recall?

A. It was only that one occasion that I remember that it was a paint plant in the city. Somebody mixed two chemicals together inside, one of their workers, and it exploded or something and was taking the paint off of all the houses around there. Mayor Gerts was a very good friend of my husband. He came up, and Albert said bring it up here before there's any more damage, and they did.

Q. When you say "bring it up here," what was being brought up?

A. Paint in drums.

Q. And this was paint from a paint plant?

A. I think it was a paint plant. It was a chemical plant or a paint plant in Reading, Ohio.

Q. Mm-hmm.

A. I don't know the name of it. We did it for the mayor of the city.

Q. I understand. Why don't you -- let's try to get as specific as we can, so I can reconstruct this. What exactly exploded? There was an explosion in the plant?

A. Yes. One of their workers mixed two – two formulas or two chemicals or whatever together. That was – that's what Mr. Gerts said.

Q. Okay.

A. And it caused a lot of steam or whatever you call it, vapor. It went into the town.

Q. All right.

A. Took paint off of their houses all around there.

Q. What was actually put into drums, is what I'm trying to understand.

A. I do not know.

Q. How many drums were brought in? Do you remember that?

A. No.

Q. Do you remember how many trucks came in carrying loads?

A. No, no.

E. Skinner Depo., p. 96. When asked if she knew when this disposal event occurred, Elsa Skinner said she could not recall but when asked if she could provide a sense of when it occurred "in terms of the '50s versus the '60s, versus the '70s," she answered, "'40s or '50s."
E. Skinner Depo., p. 97. She then testified that the plant waste was taken to the Landfill, that it was the Mayor who contacted her husband, that he "was worried to death" and that the materials were transported to the Landfill on "city trucks." She was not aware of her husband having any conversations with any one who owned the plant. She concluded her testimony with the following:

Q. So as far as you know, whatever arrangements were made were made between your husband and the mayor?

A. That's right.

Q. But you can't tell us anything about the amount of material brought up?

A. No, no.

Q. Or the number of vehicles?

A. No.

E. Skinner Depo., p. 98-99.

In effect, the City asks that this testimony be ignored. It is enough, in my judgment, to keep the City in this case in respect of a summary judgment motion. I do not have the impression that the "explosion" referred to by Elsa Skinner was necessarily one that did more than release vapors from the plant. It is also more than conceivable that the City did not want to take wastes to its leased landfill or incinerate the wastes in the City incinerator (depending upon the time frame). Albert Skinner had a relationship with the City based on payment records in 1949, he was a friend of Mayor Gertz according to the testimony, and the City has not demonstrated that its fire records or newspaper records or interviews of long time residents cover the time period in the 1940s or 1950s and were so thorough that the event described by Elsa Skinner could not have occurred without it being recorded in one of these sources. She has testified the Mayor of Reading directly arranged for the disposal of wastes from a paint plant that were hauled in City trucks to the Landfill. The City, at best, has created issues of fact.

With respect to Ray Skinners' testimony about roadside debris, he testified that roadside debris was disposed of in amounts of 5-6 cys every three to six months from sometime in the 1970s until the time the Landfill was closed. Unless I have misapprehended the City's questionnaire response, the City was not aware of this testimony beforehand and did not provide me with information about its handling of road wastes. Rather the City simply argues that this material does not contain hazardous substances. Ray Skinner's description of road debris was broad enough to include a hazardous substance (guardrails, black top, road debris, shop waste, sweepings, cans, buckets, litter, shop rags, and tires). I also cannot determine whether the payment records provided to me would cover payment for this type of waste.

Waste-in Amount. My review leads me to the following result. I am assigning Reading 1 cy, or not quite four drums, of wastes from a chemical or paint plant on the basis of Elsa Skinner's testimony, which I am also categorizing as a solid waste for purposes of calculation and analysis. At this time, I am also assigning Reading 50 cys based on Ray Skinner's testimony (I assumed 5 cys per disposal event and 10 disposal events over the period of Ray Skinner's testimony).

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372906	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-Dyne	Rest of Chem- Dyne	Total
CITY OF READING	51	0	372906	0.0137%	262252	0.0000%	0.00%	0.00%			0.00137%